

Entered on Docket February 19, 2010

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Hon. Linda B. Riegle United States Bankruptcy Judge

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Attorneys for Debtor(s)

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In the matter of:
Howerton, Sean E. & Jennifer Susan

E. & Jennifer Susan

Debtors.

Case No: BK-09-11007-LBR

Chapter 13

Trustee: Rick Yarnall

Date: 9/17/2009 Time: 3:30 P.M

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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ORDER ON

MOTION TO VALUE DEBTORS' PRINCIPAL RESIDENCE AND AVOID WHOLLY UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF LIENHOLDERS AND OBJECTION TO LIENHOLDERS PROOFS OF CLAIM, IF ANY

Debtors' Motion to Value Debtors' Principal Residence and Avoid Wholly
Unsecured Lien(s) Encumbering Same, to Modify the Rights Lienholders and

E:\howerton order on MtntoAvoidLien, sent to WILDE 1.18.2010.wpd

Objection to Lienholders' Proofs of Claim, If Any having been duly filed and served on COUNTRYWIDE HOME LOANS SERVICING, L.P. and having come before this Court for hearing on the date and at the time set forth above with Debtors appearing by and through their legal counsel, David L. Tanner, Esq. of the law firm David L. Tanner Esq. P.C. and none of the named lien holders/lenders/servicer having appeared or otherwise having responded, and good cause appearing therefor;

## THE COURT HEREBY FINDS:

- 1. On the date of the petition, Debtors were the owners of real property used as their principal residence known and described as 6844 Beverly Glen Avenue, Las Vegas, Nevada 89110-4102 legally described as follows:
  - Lot 7 in Block 6 of Hollywood Vegas Inc., Estates Tract, as shown by map thereof on file in Book 5 of Plats, Page 7, in the Office of the County Recorder of Clark County, Nevada.

Assessor's Parcel No: 140-35-110-104

- The value of said principal residence at the time their Chapter 13
   Petition was filed was \$ 250,000.00 as set forth more particularly in a written professional appraisal of subject property.
- Said property at the time of filing was subject to the following liens evidenced by Promissory Notes and Deeds of Trust:

## First Mortgage:

COUNTRYWIDE HOME LOANS SERVICING, L.P. \$337,994.87 POB 10219 Van Nuys, CA 91410-0219 Loan # 9346

## Second Mortgage:

COUNTRYWIDE HOME LOANS SERVICING, L.P. \$38,918.54
Bankruptcy Department
7105 Corporate Drive
Mail Stop PTX-B-209
Plano, TX 75024
Loan # xxxxxx9354

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- 4. That on the filing date of the instant Chapter 13 petition, the claim represented by junior lien (Second Mortgage) of COUNTRYWIDE HOME LOAN SERVICING, L.P. was wholly unsecured and may therefore be avoided pursuant to 11 U.S.C. Section 506(a) and §1322(b)(2); and
- 5. Said claim is properly reclassified as non-priority general unsecured claims to be paid pro rata with other non-priority general unsecured creditors through the Debtors' Chapter 13 plan; and
- 6. That it is consistent with the above findings that any claims as identified in Proofs of Claim filed by COUNTRYWIDE HOME LOAN SERVICING, L.P. be modified to non-priority general unsecured status to the extent set forth above.

## IT IS THEREFORE ORDERED THAT:

- The claim represented by the second lien of COUNTRYWIDE HOME LOAN SERVICING, L.P. shall be and is herewith avoided and "stripped off" from Debtors' real property identified above upon completion of Debtors' Chapter 13 plan and shall henceforth be treated as a "non-priority general unsecured claim" pursuant to 11 U.S.C. §506(a); and
- 2. That any Proof(s) of Claim filed by COUNTRYWIDE HOME LOAN SERVICING, L.P. relative to its claims shall be conformed to the findings herein as non-priority general unsecured claims to the extent each has been determined herein to be unsecured, to be paid pro rata with other non-priority general unsecured creditors through the Debtors' Chapter 13 plan; and

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3. COUNTRYWIDE HOME LOAN SERVICING, L.P. shall retain it's claims for the full amount under the loans referenced above in the event of either the dismissal of Debtors' Chapter 13 case or the conversion of the Debtors' Chapter 13 case to any other Chapter under the United States Bankruptcy Code.

Submitted By:

DAVID L. TANNER, ESQ. P.C.

Is/ DAVID L. TANNER, ESQ.

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Approved/Disapproved

Greg Wilde, Esq! Attorney for Countrywide

Approved/Disapproved

Rick Yarnall Chapter 13 Trustee

1 2 3 **ALTERNATIVE METHOD re: RULE 9021:** 4 In accordance with LR 9021, counsel submitting this document certifies as follows (check one): 5 The court has waived the requirement of approval under LR 9021. 6 No parties appeared or filed written objections, and there is no trustee 7 appointed in the case. 8 XXX I have delivered a copy of this proposed order to all counsel who 9 appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has 10 approved or disapproved the order, or failed to respond, as indicated below: 11 RICK A. YARNALL, Chapter 13 Trustee NO RESPONSE 12 701 Bridger Avenue - Suite 820 13 Las Vegas, Nevada 89101. 14 GREG WILDE, ESQ. xxxx APPROVED 15 ATTORNEY FOR COUNTRYWIDE 16 17 18 19 20 21 22 23 24 25 26 27 28